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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE PHILLIES, a  
Pennsylvania limited  
partnership,

Plaintiff,

-vs-

HARRISON/ERICKSON,  
INCORPORATED, a New York  
corporation, HARRISON  
ERICKSON, a partnership,  
and WAYDE HARRISON and  
BONNIE ERICKSON,

Defendants.

Civil Action No.

19-7239-VM-SN

DUANE MORRIS LLP  
30 SOUTH 17TH STREET  
PHILADELPHIA, PENNSYLVANIA 19103  
FEBRUARY 13, 2020  
9:18 A.M.

\*\*\*\*CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER\*\*\*\*

VIDEOTAPED DEPOSITION OF  
THOMAS ANDREW BURGOYNE

REPORTED BY:

DEBRA SAPIO LYONS, RDR, CRR, CRC, CCR, CLR, CPE

JOB NO. 176994

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February 13, 2020

Videotaped deposition of Thomas Andrew Burgoyne,  
held at the offices of Duane Morris LLP, 30 South  
17th Street, Philadelphia, Pennsylvania 19103,  
before Debra Sapio Lyons, a Registered Diplomat  
Reporter, a Certified Realtime Reporter, a  
Certified Realtime Captioner, a Certified  
LiveNote Reporter, an Approved Reporter of the  
United States District Court for the Eastern  
District of Pennsylvania, a Certified Court  
Reporter of the State of New Jersey, a Notary  
Public of the States of New Jersey, New York and  
the Commonwealth of Pennsylvania.

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drawing of this or the design of it?

A. His name is Tom Sapp.

Q. And using the -- the images on Exhibit 7, what are the changes to the Phanatic that you were mentioning?

A. Well, his hat is bigger. The blue eye -- bushy eyebrows are powder blue. The eye -- eyelash -- eyelashes, I guess, are now star-shaped and a lighter pink. The snout is shorter and cylindrical. The eyes are actually round. The white of the eyes are round. I know in that middle illustration it looks like it's oval, but they're actually round. And the pupils are oval, black pupils.

The Phanatic now has wings instead of arms. We changed -- instead of a stirrup sock, he wears a sock. So instead of a stirrup, it's a sock. And we've changed the color there to blue with a white and red stripe.

And he has red shoes. And instead of a star, we're going with a Liberty Bell logo on his shoe.

Q. So you're saying even though in

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MR. WILLIAMS: If we could take a quick break.

THE VIDEOGRAPHER: We are going off the record at 11:17.

(A recess is held from 11:18 a.m. to 11:32 a.m.)

THE VIDEOGRAPHER: We are back on the record at 11:31.

BY MR. WILLIAMS:

Q. Mr. Burgoyne, in the case the parties have collected and exchanged a bunch of documents related to the Phanatic.

Did you personally collect any documents to provide for the case?

A. Personally collect? How do you mean?

Q. Did you -- well, let me start here.

Do you store documents about your job on a hard drive at work?

A. About my job? Not -- I'm trying to think of things that I have in writing --

Q. Sure.

A. -- that would be stored on my

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computer that relates to the job.

The books. I'm trying to think of other things. I don't store a lot on my computer.

Q. Yeah, that's -- I'm just --

A. Yeah.

Q. -- trying to find out what your --

A. Yeah.

Q. -- practices are like and then I'll try to do follow-up questions if I -- if I need to --

A. Yeah.

Q. -- but I'm just trying to -- I assume you exchange e-mails with people about work.

A. Yes.

Q. Is the e-mail account we referenced earlier today the only work-related account that you have?

A. Yes.

Q. And did you provide anyone with access to that account so that they could collect documents for this litigation?

A. No.

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Q. Did you, yourself, look through your e-mails to try to provide any documents for this litigation?

A. Not that I can recall.

Q. And you said you don't store a lot on your hard drive I'll call it. Do you have a personal computer in your office?

A. I do, yes.

Q. And this is your work office?

A. Yes.

Q. And did you look on that machine to see if there are any documents relevant to this litigation?

A. Not that I can recall, no. I -- generally I don't keep a lot of paperwork. I'm -- my job, you know, pretty much is the -- the creative end of the Phanatic, the performer inside the costume. So a lot of the files and documentation over the years, you know, I -- I have some, but nothing that I can think of certainly in terms of, you know, this litigation. I'm not a great record keeper I guess is what I'm trying to say.

Q. Okay. Do you have hard copy files

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in your office at work?

A. Some, uh-huh. Yep.

Q. And do you know whether those were reviewed for the purpose of collecting documents in this case?

A. No, yeah, I don't -- I don't recall looking at any documents in my one -- my -- I have a filing cabinet that I keep, you know, various things over the years, but I don't recall looking at any of that in preparation for the litigation, no, or pertaining to the litigation.

Q. And did anyone else, to your knowledge, review any of those files?

A. No.

Q. Okay. Do The Phillies use a document management system to store documents?

A. Like what?

Q. Sure. So, for example, our firm uses something called iManage. There's one called Worldox. It's basically a cloud-based kind of way of storing things so that stuff isn't on your individual machines.

Does -- do The Phillies use

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anything like that?

A. I'm not quite sure. I know there's the iCloud and I know I've stored -- I generally use -- when I store a document, I do it on my -- my computer 'cause I'm not quite sure how the whole iCloud thing works.

Q. Okay.

A. Try to keep it simple.

Q. And when you're referring to "iCloud," is that an Apple-based storage system?

A. I think so.

Q. Okay.

A. If you say so.

Q. Do you -- is it your understanding that's how other people within the organization store documents, in iCloud?

MR. WOLFSOHN: Objection, lack of foundation.

THE WITNESS: Yeah, I don't know how people store their documents.

BY MR. WILLIAMS:

Q. Okay. But that's an option on the computer that you use at work?



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A. Yeah, I -- yes.

Q. Okay. Do you know -- have you ever seen the document request that we provided to The Phillies in this litigation?

A. No.

Q. Okay. So you haven't seen a document that lists -- prepared by our firm that lists out the types of documents that we want produced in the case?

A. Not that I recall, no.

Q. Okay.

(Counsel confer.)

Q. When we were discussing earlier this project of making some changes to the Phanatic and the potential rollout of this new costume that you described, are there specific merchandise items planned for release that reflect those changes?

A. We have talked about the possibility of having merchandise available when the Phanatic -- yeah, when the changes are made, yeah. Specifically nothing that I can think of.

Q. Okay.